



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 6, 1992

Ms. Lynn Nunns  
Assistant City Attorney  
City of Corpus Christi  
Legal Department  
P. O. Box 9277  
Corpus Christi, Texas 78469-9277

OR92-330

Dear Ms. Nunns:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 15862.

The City of Corpus Christi Police Department (the "department") has received a request for a certain application file for the position of police cadet. Specifically, the requestor seeks his "entire application file," including "any and all appendices, annexes, or other materials attached to the copy of the file." You advise us that most of the requested information has already been made available to the requestor. You have submitted to us for review, however, criminal history record information ("CHRI") (Exhibit "B"), which you claim is excepted from required public disclosure by section 3(a)(1) of the Open Records Act, and a background investigation report (Exhibit "C"), which you claim is excepted from required public disclosure under sections 3(a)(8) and 3(a)(11) of the Open Records Act.

Section 3(a)(1) excepts from required public disclosure "information deemed confidential by law, either Constitutional, statutory, or by judicial decision." Title 28, Part 20 of the Code of Federal Regulations governs the release of CHRI which states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Some or all of the data in the CHRI you have submitted appears to have been generated by the City of Corpus Christi Police Department. We look to Texas law to determine whether that CHRI data is disclosable.

In *Houston Chronicle Pub. Co. v. City of Houston*, 531 S.W.2d 177, 185 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976), the court held that a person's arrest record and criminal history were excepted from required public disclosure by section 3(a)(8). See also Open Records Decision Nos. 354 (1982); 252 (1980); 216; 183 (1978). The city, however, has not claimed that this information is protected by section 3(a)(8) and therefore has waived the right to claim this exception. See Open Records Decision No. 473 (1987) (exceptions protecting governmental interests are waived when a governmental body fails to claim them).

Other decisions of this office, however, have suggested that criminal history information may implicate privacy interests. See Open Records Decision No. 565 (1990); 216; see also *Houston Chronicle*, 531 S.W.2d at 188. Under *Industrial Found. of the South v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977), information may be withheld on common-law privacy grounds only if it is highly intimate or embarrassing and is of no legitimate concern to the public. We have examined the CHRI submitted to us for review and conclude that it contains some information that is intimate or embarrassing. Moreover, it is of no legitimate concern to the public. For your convenience, we have marked those portions of Exhibit "B" which must be withheld from required public disclosure under section 3(a)(1) of the Open Records Act. The remainder of the information, however, is not intimate or embarrassing. We do not find it to be within the section 3(a)(1) exception to disclosure.

We caution, however, that no CHRI data generated by the federal government or another state may be made available to the public by the city. See Open Records Decision No. 565 (1990). We are unable to determine from the CHRI data submitted whether any of it was generated from such other sources. Such data in the CHRI information as you determine was generated from such other sources should be withheld. The requestor may be referred to those other sources if he wishes to seek access to such information.

You claim that Exhibit "C", the background investigation report, is excepted from required public disclosure by sections 3(a)(8) and 3(a)(11) of the Open Records Act. Section 3(a)(8) excepts:

records of law enforcement agencies and prosecutors that deal with the detection, investigation, and prosecution of crime and the internal records and notations of such law enforcement

agencies and prosecutors which are maintained for internal use in matters relating to law enforcement and prosecution.

When the "law enforcement" exception is claimed as a basis for withholding information from the public, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how and why release would unduly interfere with law enforcement. Open Records Decision No. 434 (1986), citing *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977).

You advise that

Exhibit C was prepared by Corpus Christi police officers in the course and scope of employment and maintained for internal use in matters relating to law enforcement; namely, insuring the highest quality of applicants are offered employment as law enforcement officers.

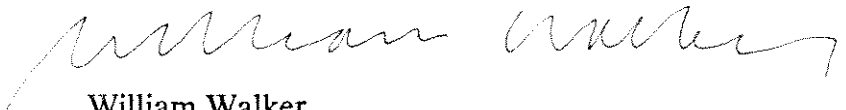
Having examined Exhibit "C", however, we conclude that you have not explained how its release would unduly interfere with law enforcement, nor do the documents supply an explanation on their face. Accordingly, Exhibit "C" may not be withheld from required public disclosure under section 3(a)(8) of the Open Records Act.

Section 3(a)(11) excepts from public disclosure "inter-agency or intra-agency memorandums or letters which would not be available by law to a party in litigation with the agency." It is well established that the purpose of section 3(a)(11) is to protect from public disclosure advice, opinion, and recommendation used in the decisional process within an agency or between agencies. This protection is intended to encourage open and frank discussion in the deliberative process. See, e.g., *Austin v. City of San Antonio*, 630 S.W.2d 391, 394 (Tex. App.--San Antonio 1982, writ ref'd n.r.e.); Attorney General Opinion H-436 (1974); Open Records Decision Nos. 538 (1990); 470 (1987). Purely factual information, however, does not constitute advice, opinion, or recommendation and may not be withheld under section 3(a)(11). Open Records Decision No. 450 (1986).

We have examined Exhibit "C" and conclude that it contains some advice, opinion, and recommendation. For your convenience, we have marked the information which may be withheld from required public disclosure under section 3(a)(11) of the Open Records Act. The remainder of the information in Exhibit "C", however, is factual, and must be released.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-330.

Yours very truly,

A handwritten signature in dark ink, appearing to read 'William Walker', is written over a horizontal line.

William Walker  
Assistant Attorney General  
Opinion Committee

WW/GCK/lmm

Ref.: ID# 15862

cc: Mr. Wayne F. Munoz  
112 West Avenue G  
Robstown, Texas 78380